

AMENDED IN SENATE AUGUST 26, 2003  
AMENDED IN SENATE AUGUST 18, 2003  
AMENDED IN ASSEMBLY JUNE 26, 2003  
AMENDED IN ASSEMBLY JUNE 5, 2003  
AMENDED IN ASSEMBLY MAY 19, 2003  
AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 685**

**Introduced by Assembly Member Leno**

February 19, 2003

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An act to amend Section 120917 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as amended, Leno. HIV counselors: education and training.

Existing law authorizes the State Department of Health Services, through its Office of AIDS, to participate in a rapid human immunodeficiency virus test research program conducted with the federal Centers for Disease Control and Prevention, involving innovative HIV testing and counseling programs.

Existing law authorizes an HIV counselor who is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction to perform

specified HIV tests, in accordance with prescribed conditions, and to order and report these test results to patients without authorization from a licensed health care professional or his or her authorized representative.

This bill would provide that an HIV counselor acting in accordance with the above provisions who successfully completes the HIV counselor training shall be deemed to have demonstrated sufficient literacy and comprehension to advance to the limited phlebotomy technician (LPT) training and to substitute completion of the HIV counselor training for ~~any~~ *the* requirement for a high school diploma or General Education Development (GED) equivalent *for a limited phlebotomy technician*, and would revise the conditions under which an HIV counselor may perform these HIV tests.

The bill would also declare that it is the intent of the Legislature that the office, in consultation with the Laboratory Science Division of the department, develop a comprehensive curriculum that integrates appropriate training for an HIV counselor and an LPT that meets the LPT training standards set forth in designated statutes and regulations.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 120917 of the Health and Safety Code
- 2 is amended to read:
- 3 120917. (a) The department, through its Office of AIDS and
- 4 the authorized agents of the office, may participate in a rapid
- 5 human immunodeficiency virus test research program conducted
- 6 with the federal Centers for Disease Control and Prevention,
- 7 involving innovative HIV testing and counseling programs. Under
- 8 the rapid HIV test research program, as authorized by this section,
- 9 the department may do the following:
- 10 (1) Perform and report clinical test results using a rapid HIV
- 11 test for diagnosis, prior to test approval by the federal Food and
- 12 Drug Administration (FDA). However, test performance and
- 13 reporting shall only be done to the extent allowed under that
- 14 device’s investigational approval by the FDA and pursuant to a



1 California Health and Human Services Agency Institutional  
2 Review Board-approved research protocol.

3 (2) Use a second independent HIV test to confirm initially  
4 reactive test results to the extent allowed under the investigational  
5 approval by the FDA. All rapid tests shall be confirmed using  
6 technology approved by the federal Food and Drug  
7 Administration. If the results from this confirmatory testing differ  
8 from the results of the rapid test, the subject shall be notified. No  
9 subject shall participate in the research protocol who does not  
10 provide appropriate contact information.

11 (b) An HIV counselor who is trained by the Office of AIDS and  
12 working in an HIV counseling and testing site funded by the  
13 department through a local health jurisdiction, or its agents, may  
14 do all of the following:

15 (1) Perform any HIV test that is classified as waived under the  
16 federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C.  
17 Sec. 263a and following) if all of the following conditions exist:

18 (A) The performance of the HIV test meets the requirements of  
19 CLIA and Chapter 3 (commencing with Section 1200) of Division  
20 2 of the Business and Professions Code.

21 (B) The person performing the HIV test meets the requirements  
22 for the performance of waived laboratory testing pursuant to  
23 subdivision (a) of Section 1206.5 of the Business and Professions  
24 Code. For purposes of this subdivision and subdivision (a) of  
25 Section 1206.5 of the Business and Professions Code, an HIV  
26 counselor trained by the Office of AIDS shall be “other health care  
27 personnel providing direct patient care” as referred to in  
28 paragraph (12) of subdivision (a) of Section 1206.5 of the Business  
29 and Professions Code.

30 (C) The patient is informed that the preliminary result of the  
31 test is indicative of the likelihood of HIV infection and that the  
32 result must be confirmed by an additional more specific test, or, if  
33 approved by the federal Food and Drug Administration for that  
34 purpose, a second different rapid HIV test. Nothing in this  
35 subdivision shall be construed to allow an HIV counselor trained  
36 by the Office of AIDS to perform any HIV test that is not classified  
37 as waived under the CLIA.

38 (2) Notwithstanding Sections 1246.5 and 2053 of the Business  
39 and Professions Code, order and report HIV test results from tests  
40 performed pursuant to paragraph (1) to patients without



1 authorization from a licensed health care professional or his or her  
2 authorized representative. Patients with indeterminate or positive  
3 test results from tests performed pursuant to paragraph (1) shall be  
4 referred to a licensed health care provider whose scope of practice  
5 includes the authority to refer patients for laboratory testing for  
6 further evaluation.

7 (c) Notwithstanding any other provision of law, an HIV  
8 counselor acting in accordance with this section who successfully  
9 completes the HIV counselor training shall be deemed to have  
10 demonstrated sufficient literacy and comprehension to advance to  
11 the limited phlebotomy technician training and may substitute  
12 successful completion of the HIV counselor curriculum for ~~any~~  
13 *the* requirement for a high school diploma or General Education  
14 Development (GED) equivalent *for a limited phlebotomy*  
15 *technician, as defined in Section 1029.116 of Title 17 of the*  
16 *California Code of Regulations pursuant to Section 1246 of the*  
17 *Business and Professions Code.*

18 (d) *An HIV counselor who meets the requirements of this*  
19 *section with respect to performing any HIV test that is classified*  
20 *as waived under the CLIA may not perform any other test unless*  
21 *that person meets the statutory and regulatory requirements for*  
22 *performing that other test.*

23 SEC. 2. The Legislature finds and declares that the public  
24 health threat of the AIDS epidemic and the challenges of outreach  
25 to certain target populations for testing and counseling justify steps  
26 to ensure rapid HIV testing is made available expeditiously and  
27 safely. The Legislature further finds and declares that it would be  
28 inefficient, costly, and an impediment to deployment of the rapid  
29 HIV test if an HIV counselor has to be trained, using partially  
30 redundant curricula, by the Office of AIDS in addition to an  
31 authorized training program for a limited phlebotomy technician,  
32 as defined in Section 1029.116 of Title 17 of the California Code  
33 of Regulations pursuant to Section 1246 of the Business and  
34 Professions Code. Therefore, it is the intent of the Legislature that  
35 the Office of AIDS, in consultation with the Laboratory Science  
36 Division of the State Department of Health Services, develop a  
37 comprehensive curriculum *for training HIV counselors* that  
38 integrates appropriate training for an HIV counselor and a limited  
39 phlebotomy technician (LPT) *and* that meets the LPT education,  
40 training, and experience standards set forth in paragraph (1) of



1 subdivision (a) of Section 1034 of Title 17 of the California Code  
2 of Regulations pursuant to Section 1246 of the Business and  
3 Professions Code, except as provided in subdivision (c) of Section  
4 120917 of the Health and Safety Code.

5 SEC. 3. This act is an urgency statute necessary for the  
6 immediate preservation of the public peace, health, or safety  
7 within the meaning of Article IV of the Constitution and shall go  
8 into immediate effect. The facts constituting the necessity are:

9 In order to authorize more personnel to participate in  
10 performing HIV tests as soon as possible, it is necessary that this  
11 act take effect immediately.

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